

## Article - Criminal Procedure

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§8–301.

(a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:

(1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; or

(ii) if the conviction resulted from a guilty plea, an Alford plea, or a plea of nolo contendere, establishes by clear and convincing evidence the petitioner's actual innocence of the offense or offenses that are the subject of the petitioner's motion; and

(2) could not have been discovered in time to move for a new trial under Maryland Rule 4–331.

(b) A petition filed under this section shall:

(1) be in writing;

(2) state in detail the grounds on which the petition is based;

(3) describe the newly discovered evidence;

(4) contain or be accompanied by a request for hearing if a hearing is sought; and

(5) distinguish the newly discovered evidence claimed in the petition from any claims made in prior petitions.

(c) (1) A petitioner shall notify the State in writing of the filing of a petition under this section.

(2) The State may file a response to the petition within 90 days after receipt of the notice required under this subsection or within the period of time that the court orders.

(d) (1) Before a hearing is held on a petition filed under this section, the victim or victim's representative shall be notified of the hearing as provided under § 11-104 or § 11-503 of this article.

(2) A victim or victim's representative has the right to attend a hearing on a petition filed under this section as provided under § 11-102 of this article.

(e) (1) Except as provided in paragraph (2) of this subsection, the court shall hold a hearing on a petition filed under this section if the petition satisfies the requirements of subsection (b) of this section and a hearing was requested.

(2) The court may dismiss a petition without a hearing if the court finds that the petition fails to assert grounds on which relief may be granted.

(f) (1) If the conviction resulted from a trial, in ruling on a petition filed under this section, the court may set aside the verdict, resentence, grant a new trial, or correct the sentence, as the court considers appropriate.

(2) (i) If the conviction resulted from a guilty plea, an Alford plea, or a plea of nolo contendere, when assessing the impact of the newly discovered evidence on the strength of the State's case against the petitioner at the time of the plea, the court may consider admissible evidence submitted by either party, in addition to the evidence presented as part of the factual support of the plea, that was contained in law enforcement files in existence at the time the plea was entered.

(ii) If the court determines that, when considered with admissible evidence, in addition to the evidence presented as part of the factual support of the plea, that was contained in law enforcement files in existence at the time the plea was entered, the newly discovered evidence establishes by clear and convincing evidence the petitioner's actual innocence of the offense or offenses that are the subject of the petitioner's motion, the court may:

1. allow the petitioner to withdraw the guilty plea, Alford plea, or plea of nolo contendere; and

2. set aside the conviction, resentence, schedule the matter for trial, or correct the sentence, as the court considers appropriate.

(iii) When determining the appropriate remedy, the court may allow both parties to present any admissible evidence that came into existence after the plea was entered and is relevant to the petitioner's claim of actual innocence.

(3) The court shall state the reasons for its ruling on the record.

(g) A petitioner in a proceeding under this section has the burden of proof.

(h) If the petitioner was convicted as a result of a guilty plea, an Alford plea, or a plea of nolo contendere, an appeal may be taken either by the State or the petitioner from an order entered under this section.

(i) On written request by the petitioner, the State's Attorney may certify that a conviction was in error, if:

(1) the court grants a petition for relief under this section;

(2) in ruling on a petition under this section, the court:

(i) sets aside the verdict or conviction; or

(ii) schedules the matter for trial or grants a new trial; and

(3) the State's Attorney declines to prosecute the petitioner because the State's Attorney determines that the petitioner is innocent.

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